

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

Ken Peterson, Commissioner of Labor  
and Industry,

Complainant,

and

Local 638, United Brotherhood of  
Teamsters,

Intervenor,

v.

United Parcel Service, Inc.,

Respondent.

**ORDER ON MOTION  
FOR PARTIAL  
SUMMARY DISPOSITION**

This matter is before Administrative Law Judge Kathleen D. Sheehy on the motion of the Complainant for partial summary disposition. The motion record closed on April 15, 2011.

Jackson Evans, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared for the Commissioner of Labor and Industry (Complainant). Carla J. Guinn, Brooks & Smith, LLP, Suite 2400, 230 Peachtree Street NW, Atlanta, GA 30303-1557, appeared for United Parcel Service, Inc. (Respondent).

Based upon all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED THAT:

The Complainant's motion for partial summary disposition is DENIED, as more fully explained in the Memorandum attached hereto.

Dated: April 21, 2011

s/Kathleen D. Sheehy  
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KATHLEEN D. SHEEHY  
Administrative Law Judge

## MEMORANDUM

In this matter the Commissioner of Labor and Industry seeks to enforce two citations issued to the Respondent for failing to maintain the air temperature of its sorting facilities in Minneapolis and Maple Grove at 60 degrees F. The Complaints allege that the Respondent violated Minn. R. 5202.0110, subp. 3 (2009), which provides:

**Minimum air temperature.** Indoor workroom temperatures shall be maintained as follows:

A. The minimum air temperature of 60 degrees Fahrenheit shall be maintained in all indoor workrooms where work of a strenuous nature is performed, unless prohibited by process requirements.

B. The minimum air temperature of 65 degrees Fahrenheit shall be maintained in all other indoor workrooms unless prohibited by process requirements.

The Complainant took temperature readings in December 2009 and January 2010, and found that the temperatures in the Minneapolis facility were as low as 54 degrees F; in Maple Grove, the temperatures were between 48 and 50 degrees F.<sup>1</sup> The Commissioner concluded the Respondent violated the rule at both facilities; that the violations were properly classified as serious; and that a penalty of \$1,400 per violation was appropriate. The Complainant moves for partial summary disposition, arguing the undisputed facts demonstrate that violations occurred in both facilities.<sup>2</sup>

The Respondent denies that this rule applies to its Minneapolis and Maple Grove sorting facilities, arguing that these areas cannot be considered “indoor workrooms” within the meaning of the rule because vehicles drive in and out of them as they are loaded and unloaded, and vehicles are frequently parked inside them for lengthy periods. The Respondent contends that, even if the rule is applicable, process requirements prohibit maintaining air temperature at 60 degrees Fahrenheit. The Respondent also argues that it is infeasible to maintain the facilities at a temperature of 60 degrees F during the winter months.

### Motions for Summary Disposition

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>3</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>4</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>5</sup>

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<sup>1</sup> Affidavit of Jackson Evans, Ex. J.

<sup>2</sup> The Commissioner does not seek summary disposition on the issues whether the citation was properly classified as serious or whether the penalty was properly calculated.

<sup>3</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

<sup>4</sup> See Minn. R. 1400.6600.

<sup>5</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.<sup>6</sup> The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.<sup>7</sup> The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.<sup>8</sup>

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.<sup>9</sup> All doubts and factual inferences must be resolved against the moving party.<sup>10</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>11</sup>

### Analysis

The Respondent's sorting facility in Maple Grove is a 330,000 sq. ft. building, in which parcels are sorted and distributed for delivery to recipients.<sup>12</sup> The Maple Grove facility has 136 garage doors that are about 10 by 12 ft; they are designed so that tractor trailers can be backed up to the doors from the outside, at which point the garage doors open and the truck contents can be unloaded. The garage doors are framed by a canvas-covered foam seal on the top and sides, but are open at the bottom.<sup>13</sup> The seals have vents that open during warm months and are closed with Velcro when it is cold outside.<sup>14</sup> The Complainant suggests that the seals are intended to keep cold air from entering during the winter months; the Respondent asserts the primary purpose of the seals is to protect packages from the weather as they are unloaded from the tractor trailers, sorted, and re-loaded onto delivery trucks.

In addition to the garage doors, there are four main overhead (or "bay") doors through which delivery vehicles enter and exit the facility. The main doors open when triggered by pressure pads that activate when a truck approaches to either enter or leave the facility. The Complainant contends that delivery trucks typically exit the facility during the morning hours after they have been loaded with packages to be delivered, and they return in the evenings to be loaded for the next day. In addition, the facility has three dock doors that are typically used during peak periods such as November and December. The sorting area of the Maple Grove facility has eight main heaters referred to as "rapid air exchangers," which provide heat and function as a ventilation system to expel pollutants from the delivery vehicles.

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<sup>6</sup> *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>7</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 75 (Minn. App. 1988).

<sup>8</sup> *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

<sup>9</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

<sup>10</sup> *See, e.g., Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).

<sup>11</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>12</sup> *Evans Aff. Ex. J.*

<sup>13</sup> Affidavit of Lance Hale ¶ 9.

<sup>14</sup> Affidavit of Michael Otto ¶¶ 18-30.

The Minneapolis facility is similarly arranged, with 157 garage doors and four overhead traffic doors for delivery vehicles to enter and exit. There are 13 “main” heaters and 20 auxiliary heaters to increase temperatures in specific areas as needed.<sup>15</sup>

The Commissioner has presented evidence that prior to 2009, thermostats in Minneapolis and Maple Grove were set to 60 degrees F, and the systems in those facilities were adequate to provide heat.<sup>16</sup> In October 2009, the Respondent implemented a cost-cutting policy that required all thermostats in operations areas to be set to maintain heat at 45 degrees Fahrenheit when occupied and 40 degrees Fahrenheit when unoccupied.<sup>17</sup>

The Commissioner’s investigation of this matter in December 2009 was prompted by employee complaints that the sorting facilities were too cold and that employees were exposed to exhaust fumes. The investigation showed that the sorting facilities were well ventilated; carbon dioxide levels were within recommended levels, and there was no nitrogen dioxide (a component of diesel exhaust) detected. Temperature measurements taken during the inspection in Maple Grove in December 2009 ranged from 48 to 50 degrees Fahrenheit. Temperature measurements in Minneapolis ranged from 54 to 66 degrees Fahrenheit.<sup>18</sup>

The Respondent disputes the description of its heating system and alleges that heat for its employees in both facilities is primarily provided through radiant heating, not through air exchangers. It contends that it is not feasible to heat the air temperature to 60 degrees F with these systems, because the main doors open and close to allow the entry and exit of 400 to 500 vehicles per day. When the vehicles are not in use, they are parked inside the facilities, overnight or up to 12 to 14 hours per day. In addition, the Respondent contends that the frequent fresh air exchanges needed to ventilate exhaust preclude maintenance of a standard air temperature during cold weather. Moreover, as noted above, the Respondent maintains that dock seals are designed to protect packages from the weather, not to create a sealed environment for heating, and that heated air escapes through these doors into the trailers that are parked outside.<sup>19</sup>

The Complainant maintains that it has consistently taken the position that buildings such as these facilities are indoor workrooms subject to the rule. In the past it has issued citations of the rule to a supplier of wooden pallets with a 40,000 sq. ft. facility, having one large overhead door that opened to permit ingress and egress of forklifts<sup>20</sup>; a brick manufacturer that conducted “tumbler” operations in a shed that was heated only by space and floor heaters<sup>21</sup>; a manufacturer of custom molded rubber products that failed to adequately heat various interior portions of its 14,000 sq. ft. facility<sup>22</sup>; a manufacturer of rodeo equipment that used electric space heaters to heat areas where employees used sewing machines, because the heating system had been shut off<sup>23</sup>; a manufacturer of corn flour and tortilla products that failed to adequately heat

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<sup>15</sup> Affidavit of Ronald Richardson ¶¶ 4-6 & 14-21.

<sup>16</sup> Otto Aff. ¶ 15; Richardson Aff. ¶ 11.

<sup>17</sup> Evans Aff. Ex. B.

<sup>18</sup> Evans Aff. Exs. F & J.

<sup>19</sup> *See generally* Affidavit of Lance Hale.

<sup>20</sup> Ex. M (OSHI ID Y7000, recorded temperatures were between 31 and 35 degrees F).

<sup>21</sup> Ex. M (OSHI ID S8945, recorded temperatures averaged 35 F).

<sup>22</sup> Ex. M (OSHI ID Q5731, recorded temperatures between 41 and 55 degrees F).

<sup>23</sup> Ex. M (OSHI ID I5467, recorded temperatures between 47 and 56 degrees F).

a room used to mix and store minor ingredients<sup>24</sup>; a flooring manufacturer that failed to adequately heat a saw room<sup>25</sup>; and a recycling facility that had no heat in the areas where sorting took place, and it appears doors were kept open to accommodate “forklifts running indoors and outdoors” as trucks arrived to deliver material.<sup>26</sup> None of these citations appears to involve a situation similar to this one, in which hundreds of package cars and trucks enter and exit the “indoor workroom” on a regular basis each day.

In short, it is unclear whether the indoor workroom rule should be applied to this type of facility; and if it does apply, whether “process requirements” or other factors make it infeasible to maintain the temperature at 60 degrees F.<sup>27</sup> In addition, there are explicit factual disputes as to the design and function of the HVAC system in these facilities. Moreover, the record is unclear as to what other rules might apply to these areas if they are not considered indoor workrooms. The Complainant has not established that the heat in these facilities was ever maintained at 60 degrees F. These issues must be explored at the hearing, along with issues pertaining to the classification of the violation and the calculation of the penalty. The Administrative Law Judge suggests that a site visit to one of the facilities should take place in conjunction with the evidentiary hearing, and the parties should attempt to reach agreement with each other as to who should attend and what the site visit will entail.

**K.D.S.**

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<sup>24</sup> Ex. M (OSHI ID X6353, recorded temperatures between 52 to 53 degrees F, where the use and storage of raw ingredients did not require special temperatures).

<sup>25</sup> Ex. M (OSHI ID S0970, recorded temperatures of 42 degrees F).

<sup>26</sup> Ex. M (OSHI ID Q5731, recorded temperatures of 40 degrees F).

<sup>27</sup> The Respondent may amend its Answer to assert infeasibility as an affirmative defense. Given that the hearing has been rescheduled to July 6-7, 2011, the amendment should not cause prejudice to the Complainant.